IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4797 OF 2006

Rainbow Co-operative Housing Society Ltd and ors. .. Petitioners
vs
Mr Dinshaw Ardeshir Irani & Ors. .. Respondents

Mr Charanjeet Chanderpal, for the petitioners.
Mr N.V.Walawalkar, senior counsel a/w Mr A.B.Nagvekar i/b M/s Soloman & Co for respondent nos 1 and 2.
Mr M.H.Solkar, AGP for respondent nos 10 to 14.

CORAM : D.B.BHOSALE,J.
DATE : 19.09.2006

PC:

1. Heard Mr.Chanderpal, learned counsel for the petitioners, Mr.Walawalkar, learned senior counsel for respondent nos.1 and 2 and Mr.Solkar, learned counsel for respondent nos.10 to 14.

2. Mr.Walawalkar, learned senior counsel for respondent nos 1 and 2 submitted that the suit itself has been dismissed for default on 29.7.2006 and, therefore, the writ petition does not survive. Mr.Chanderpal, learned counsel for the petitioners still insisted for hearing of the writ petition on merits and argued for about twenty-five minutes. He submitted that the petitioners do not desire to go back to the City Civil Court and that this Court can entertain all the prayers made in the writ petition. The writ petition was initially filed under Articles 226 and 227 of the

Constitution of India, however, on the last occasion, leave was sought to delete Article 226 of the Constitution. The leave, as prayed for, was granted and the amendment was also carried out by the learned counsel for the petitioners. It is against this backdrop it would be relevant to reproduce the prayers in this writ petition which reads thus:

> (a) This Honourable Court may set aside the impugned order dated 20th January, 2006 attached as Exhibit-A to this petition, passed by the Bombay City Civil Court in Suit No.384 of 2006 and may grant the relief in terms of prayer clause (a) in the draft notice of motion attached with the plaint, forming part of Exhibit-B to this petition which means and reads that pending hearing and final disposal of the suit by the Bombay City Civil Court, it be directed that any construction taken place on Plot No.C-2 on land bearing CTS number 7A and 7B or any part thereof and the approval of the amended lay out/sub division be stayed, and permanent injunction be granted;
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> (b) This Honourable court may direct the Respondents No.1-3 or the concerned respondents (empowered to convey) to convey the writ lands in the respective names of the petitioners in respect of the areas of writ lands occupied by them to revision of Development Rules by Respondent nos 15 to 17 as mentioned in this plaint in terms of Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act.
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> (c) This Hon'ble Court may declare that Respondent Nos 1-9, 20 and 21 have no rights, titles and interest in the writ land after execution of the agreements of the sale of flats with members of the petitioners and that the petitioners are in adverse possession of the writ land.
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> (d) This Honourable Court may direct that the

amended layout plan/sub-division approved by respondent no.17 be deemed null and void and rendered illegal, of no legal effect and thereby cancelled.

(e) This Honourable Court may direct that any construction taken place on plot no.C-2 on land bearing CTS Number 7A and 7B, after the sanctioning of the amended layout plan/sub-division by the respondent no.17 be deemed illegal and be demolished in terms of the Mumbai Municipal Corporation Act, 1888, however, the construction on the said plot no.c-2 may be permitted to the extent permissible in terms of the old amended layout plan/sub-division approved in the year 1974.

(f) Pending hearing and final disposal, this Honourable Court may direct that any construction taken place on plot no.C-2 on land bearing CTS number 7A and 7B or any part thereof and the approval of the amended layout/sub-division be stayed."

2. Insofar as prayer (a) is concerned, it has become infructuous in view of the order dated 29.7.2006 dismissing the suit for default. Insofar as prayers (b) to (e) are concerned, they are misconceived and devoid of any merit and in any case cannot be entertained in the writ petition under Article 227 of the Constitution of India. This writ petition is dismissed with costs quantified at Rs.3000/- and to be remitted to the State Legal Services Authority within two weeks from today.

(D.B.BHOSALE,J.)